

FILED
 UNITED STATES DISTRICT COURT CLERKS OFFICE
 DISTRICT OF MASSACHUSETTS

2005 MAR -7 P 3:27

RIZZARI CONSTRUCTION,

Plaintiff,

v.

GRANITE INDUSTRIAL GASES,
 INC., AND TODD MILLER,

Defendants.

05-CV-10434-GAO

Civil Action No.:

MAGISTRATE JUDGE

Alexander

RECEIPT # *62577*
 AMOUNT \$ *250*
 SUMMONS ISSUED *NTA*
 LOCAL RULE 4.1 ☐
 WAIVER FORM ☐
 MCF ISSUED ☐
 BY DPT. CLK. *EDM*
 DATE *3/8/05*

NOTICE OF REMOVAL

TO: The Honorable Judges of the United States District Court for the District of Massachusetts:

1. The Petitioners, Granite Industrial Gases, Inc. and Todd Miller, respectfully show that they are named defendants, as captioned above, in an action brought by the Plaintiff, Rizzari Construction, which is now pending in the Lowell Superior Court, Middlesex County, Massachusetts, Civil Action No. 05-0524-L.

2. The above-named civil action pending in the Lowell Superior Court was filed on or about February 14, 2005, and the Summons and Complaint were served on February 22, 2005. Attached as Exhibit A is a copy of the Sheriff's return of service dated February 22, 2005.

3. Upon information and belief, no further proceedings have been had in Civil Action No. 05-0524-L, and the time of Petitioners within which to file a notice of removal has not expired.

4. Jurisdiction. Based on the allegations contained in the Complaint, which is attached hereto as Exhibit B, the state court action is a civil suit which may be removed to this Court by the Petitioners pursuant to 28 U.S.C. §§ 1332(a) and 1441(a). The Plaintiff in the state

court action is a resident of Massachusetts, and the Defendants are a New Hampshire resident (Todd Miller), and a New Hampshire corporation with a principle place of business in New Hampshire (Granite Industrial Gases, Inc.). The amount in controversy is \$101,450.00. Therefore, the requirements for diversity under 28 U.S.C. § 1332(a) are satisfied and removal is proper pursuant to 28 U.S.C. § 1441(a).

5. Venue. Petitioners desire to remove this action pursuant to 28 U.S.C. § 1446(a), to the United States District Court for the District of Massachusetts because it is the district in which the action is now pending.

6. After the filing of this Notice of Removal in the United States District Court for the District of Massachusetts, (a) written notice of the filing of this Notice will be given by the attorneys for the Petitioners to the attorney for the Plaintiff as provided by law, (b) a certified copy of this Notice will be filed with the Clerk of the Lowell Superior Court, Middlesex County, and (c) certified copies of all pleadings on file in said Lowell Superior Court, Middlesex County, Civil Action No. 05-0524-L, will be filed with this Court.

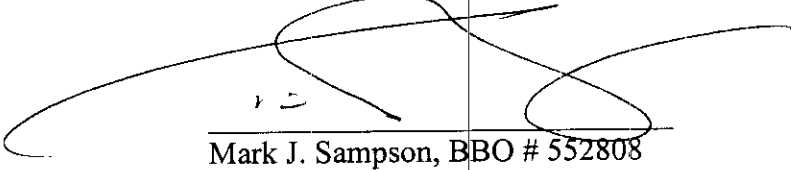
7. The Petitioners have a good and sufficient defense to the Plaintiff's claims in this action.

8. No previous application for removal has been made to this or any other Court with respect to this action.

WHEREFORE, Petitioners Granite Industrial Gases, Inc. and Todd Miller pray that this action be removed from the Lowell Superior Court, Middlesex County, to the United States District Court for the District of Massachusetts.

GRANITE INDUSTRIAL GASES, INC.,
and TODD MILLER,

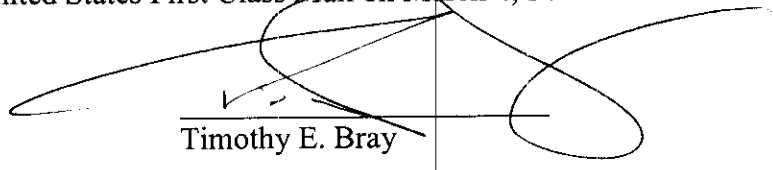
By their attorneys,



Mark J. Sampson, BBO # 552808
E-mail: msampson@devinemillimet.com
Timothy E. Bray, BBO # 652398
E-mail: tbray@devinemillimet.com
DEVINE, MILLIMET & BRANCH, PA
300 Brickstone Square, 9th Floor
P.O. Box 39
Andover, MA 01810
(978) 475-9100

CERTIFICATE OF SERVICE

I, Timothy E. Bray, hereby certify that a true copy of this document was served upon the attorney of record for each party by United States First Class Mail on March 4, 2005.



Timothy E. Bray

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Rizzari Construction

(b) County of Residence of First Listed Plaintiff Middlesex County
(EXCEPT IN U.S. PLAINTIFF CASES) Massachusetts

(c) Attorney's (Firm Name, Address, and Telephone Number)

Richard P. Heartquist, Esq.
200 Sutton St., #244, No. Andover, MA 01845

DEFENDANTS

Granite Industrial Gases, Inc.
Todd Miller

County of Residence of First Listed Defendant Rockingham County,
(IN U.S. PLAINTIFF CASES ONLY) New Hampshire

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known) Mark J. Sampson, BBO#552808
Timothy E. Bray, BBO#652398
Devine, Millimet & Branch, PA, PO Box 39,
300 Brickstone Square, 9th Flr, Andover, MA 01810

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §§1332(a) and 1446(a)

Brief description of cause:

Removal of construction contract dispute**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Rizzari Construction v. Granite Industrial Gases, et al
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Timothy E. Bray, EsquireADDRESS Devine, Millimet & Branch, PA, 300 Brickstone Sq, 9th Flr, PO Box 39, Andover, MATELEPHONE NO. 978-475-9150

01810

TO PLAINTIFF'S ATTORNEY: PLEASE CIRCLE TYPE OF ACTION INVOLVED: —
TORT — MOTOR VEHICLE TORT — CONTRACT —
EQUITABLE RELIEF — OTHER

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
DEPARTMENT
OF THE
TRIAL COURT
CIVIL ACTION
No. 05-0524L

MIDDLESEX . ss
[seal]

Rizzari Construction
....., Plaintiff(s)

v.

Granite Industrial Gases, Inc. and
Todd Miller....., Defendant(s)

SUMMONS

To the above-named Defendant:

You are hereby summoned and required to serve upon Richard P. Heartquist
..... plaintiff's attorney, whose address is 200 Sutton Street
#244 North Andover, MA 01845
..... an answer to the complaint which is herewith
served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you
fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also
required to file your answer to the complaint in the office of the Clerk of this court at Middlesex
Superior Court
..... either before service upon plaintiff's attorney or within a
reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may
have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's
claim or you will thereafter be barred from making such claim in any other action.

Witness, Barbara J. Bousc
.....
the day of
..... in the year of our Lord

Edward J. Sullivan
.....
Clerk

NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all such defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

NOTICE TO DEFENDANT -- You are required to appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days of specified herein and also file the original in the Clerk's Office.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on
20....., I served a copy of the within summons, together with a copy of the complaint in this action,
upon the within-named defendant, in the following manner (See Mass. R. Civ. P. 4 (d) (1-5)):

Dated:

N.B. TO PROCESS SERVER:

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX
ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.

(.....)
(.....)
(.....)

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX ss.
SUPERIOR COURT
DEPARTMENT
OF THE
TRIAL COURT
CIVIL ACTION
No.

Plff.

Def.

SUMMONS
(Mass. R. Civ. P. 4)

DATE 3/20/05 TIME 2:40 PM

LOCATION D7

SERVICE IN HAND ABOVE

DEPUTY SHERIFF 681W. PATTINGTON
WINDHAM COUNTY, N.H.

CIVIL ACTION
COVER SHEETSuperior Court of Massachusetts
County: 

PLAINTIFF(S)

Rizzari Construction

DEFENDANT(S)

Granite Industrial Gases, Inc.
Todd MillerATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE
Richard Heartquist

200 Sutton Street #244

North Andover, MA 01845

Board of Bar Overseers Number

BDO#564451

ATTORNEY (if known)

Origin code and track designation

Place an x in one box only:

- ☒ 1. F01 Original Complaint
- ☐ 2. F02 Removal to Sup.Ct. C.231,s.104
(Before trial) (F)
- ☐ 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)

- ☐ 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X)
- ☐ 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)
- ☐ 6. E10 Summary Process Appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO.

TYPE OF ACTION (specify)

TRACK

IS THIS A JURY CASE?

A12

Construction Dispute

(A)

(X) Yes

() No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

A. Documented medical expenses to date:

1. Total hospital expenses \$
2. Total Doctor expenses \$
3. Total chiropractic expenses \$
4. Total physical therapy expenses \$
5. Total other expenses (describe) \$

Subtotal \$

- B. Documented lost wages and compensation to date \$
- C. Documented property damages to date \$
- D. Reasonably anticipated future medical and hospital expenses \$
- E. Reasonably anticipated lost wages N/A \$
- F. Other documented items of damages (describe) \$

G. Brief description of plaintiff's injury, including nature and extent of injury (describe)

TOTAL \$

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

Plaintiff brings this civil action for defendant's failure to pay plaintiff for construction and electrical work provided on or about 11/01. Plaintiff asserts the following claims: breach of contract, quantum meruit fraud/deceit, G.L. c. 93A violations and unjust enrichment.

TOTAL \$101,450.00...

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record
Feb. 28 2005 11:11AM P2

PHONE NO. : 603 537 0259

DATE: 2/8/05

FROM : GRANITE INDUSTRIAL GASES

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT DEPARTMENT
LOWELL DIVISION
DOCKET #:

RIZZARI CONSTRUCTION,)
Plaintiff)

v.)

COMPLAINT

GRANITE INDUSTRIAL GASES)
INC., and TODD MILLER,)
individually)
Defendantss)

INTRODUCTION

Plaintiff brings this civil action for Defendants's failure to pay Plaintiff contractor for construction, installation of heating and sprinkler system, and electrical work provided on or about November 2001. The outstanding cost is \$101,450.00, plus interest, costs, and attorney's fees. Plaintiff asserts the following claims: Breach of Contract, Quantum Meruit, Fraud/Deceit, G.L. c. 93A Violations and Unjust Enrichment.

PARTIES

1. The Plaintiff, Rizzari Construction owned and operated by Michael Rizzari, is a sole proprietorship, whose address at relevant times was 142 Methuen Street, Lowell, MA 01850.
2. The Defendants, Granite Industrial Gases Inc., is upon information and belief, a duly organized New Hampshire corporation whose address is 49 North High Street, Derry, NH 03038.

3. The Defendants, Todd Miller, is upon information and belief an individual person, whose only known address is 49 North High Street, Derry, NH 03038.

FACTS

4. On September 10, 2001 Defendantss enlisted the services of Plaintiff for construction and installation of heating and sprinkler system.
5. On September 10, 2001 Plaintiff quoted Defendantss \$101,450.00 for completion of work as follows: relocate support findings \$1,550.00, electrical work \$48,300.00, heating system \$13,600.00, sprinkler system \$38,000.00.
6. The agreed payments made by Defendants to Plaintiff for work completed were scheduled as follows: \$33,000.00 upon commencement of work, \$33,000.00 upon completion of column and electrical work, and \$35,800.00 upon receipt of occupancy permit.
7. On November 15, 2001, Todd Miller, executed a contract accepting Plaintiff's quote, work description, and payment schedule.
8. On or about May 1, 2002 the work was completed in a professional and workmanlike manner and Defendants acknowledged its satisfactory completion.
9. The previously agreed fee of \$101,450.00 is past due.
10. No payments have been made on the balance. Granite has refused all demands for payment on the outstanding balance.

COUNT I
(Breach of Contract)

11. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1-10 above.

21. The Defendants requested that the Plaintiff provided said services, and was aware that said services were being provided in return for their fair market value and not gratuitously.
22. The Plaintiff provided estimates of the value of the work which was eventually performed. The Defendants accepted those estimates.
23. At the time the work was done, all parties intended to create a contract for services.
24. At the time the work was done, all parties had the apparent and actual authority to contract on behalf of their respective companies.
25. As a direct result of the Defendants' refusal to pay, Plaintiff has suffered damages in the amount of \$101,450.00 (One Hundred and One Thousand, Four Hundred Fifty Dollars) plus interests, costs, and attorney's fees.

COUNT III
(Deceit/Fraud)

26. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1-25 above.
27. The Defendants falsely stated to the Plaintiff that the Defendants would compensate the Plaintiff for construction, electrical work, and installation of heating and sprinkler systems.
28. The Defendants had knowledge of the falsity of its statement or have acted with reckless indifference to the truth.
29. The Defendants intended to induce the Plaintiff's reliance on the misrepresentation.

30. The Plaintiff's reliance on the Defendants' misrepresentation was justifiable as it was in the normal course of business, and the Defendants acknowledged the bill signing the offer sheet.
31. As a direct result of the Defendants' refusal to pay, Plaintiff has suffered damages in the amount of \$101,450.00 (One Hundred and One Thousand, Four Hundred Fifty Dollars) plus interest, costs, and attorney's fees.

COUNT IV
(Chapter 93A §§ 2 and 11)

32. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1-31 above.
33. The Defendants has engaged in unfair and deceptive acts and practices in conducting its business, to wit, the Defendants enlisted the Plaintiff to provide construction, electrical work, and installation of a heating and sprinkler system to its business without intending to pay for the full value of those services.
34. The Defendants' failure to pay is willing and with knowledge.
35. As a direct result of the Defendants' refusal to pay, Plaintiff has suffered damages in the amount of \$101,450.00 (One Hundred and One Thousand, Four Hundred Fifty Dollars) plus interest, costs, attorney's fees which amount should be tripled for the Defendants' egregious violation of G.L. c. 93A §§ 2 and 11 to \$304,350.00 (Three Hundred Four Thousand, Three Hundred Fifty Dollars).

COUNT V
(Equity/Unjust Enrichment)

36. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1-35 above.
37. The Plaintiff provided \$101,450.00 (One Hundred and One Thousand, Four Hundred and Fifty Dollars) worth of construction, electrical work, and installation of a heater and sprinkler system to the Defendants.
38. The Defendants requested that the Plaintiff provide said services, and were aware that said services were being provided in return for fair market value and not gratuitously.
39. The Plaintiff provided estimates of the value of the work which was eventually performed. Those estimates were accepted by the Defendants pursuant to their signature offer sheet.
40. At the time the work was done, all parties intended to create a contract for services.
41. At the time the work was done, all parties had the apparent and actual authority to contract on behalf of their respective companies.
42. The Defendants would be unjustly enriched if they were not required to compensate the Plaintiff for its services.
43. As a direct result of the Defendants' refusal to pay, Plaintiff has suffered damages in the amount of \$101,450.00 (One Hundred and One Thousand, Four Hundred Fifty Dollars) plus interest, costs, and attorney's fees.

WHEREFORE, THE PLAINTIFF PRAYS FOR THE FOLLOWING RELIEF:

- (1) Award on Count I, judgment to Rizzari Construction and against Granite Industrial Gas, Inc. in the amount of actual damages \$101,450.00 (One Hundred and One Thousand, Four Hundred and Fifty Dollars) plus interest, costs, and attorney's fees.
- (2) Award on Count I, judgment to Rizzari Construction and against Todd Miller, in the amount of actual damages \$101,450.00 (One Hundred and One Thousand, Four Hundred and Fifty Dollars) plus interest, costs, and attorney's fees.
- (3) Award on Count II, judgment to Rizzari Construction and against Granite Industrial Gas, Inc. in the amount of actual damages of \$101,450.00 (One Hundred and One Thousand, Four Hundred and Fifty Dollars) plus interest, costs, and attorney's fees.
- (4) Award on Count II, judgment to Rizzari Construction and against Todd Miller, in the amount of actual damages of \$101,450.00 (One Hundred and One Thousand, Four Hundred and Fifty Dollars) plus interest, costs, and attorney's fees.
- (5) Award on Count III, judgment to Rizzari Construction and against Granite Industrial Gas, Inc. in the amount of actual damages of \$101,450.00 (One Hundred and One Thousand, Four Hundred and Fifty Dollars) plus interest, costs, and attorney's fees.
- (6) Award on Count III, judgment to Rizzari Construction and against Todd Miller, in the amount of actual damages of \$101,450.00 (One Hundred and One Thousand, Four Hundred and Fifty Dollars) plus interest, costs, and attorney's fees.
- (7) Award on Count IV, judgment to Rizzari Construction and against Granite Industrial Gas, Inc. in the amount of actual damages of \$101,450.00 (One Hundred and One Thousand, Four Hundred and Fifty Dollars) with said amount to be trebled to for an additional \$202,900.00 (Two Hundred Two Thousand Nine Hundred Dollars) plus interest, costs, and attorney's fees.
- (8) Award on Count IV, judgment to Rizzari Construction and against Todd Miller in the amount of actual damages of \$101,450.00 (One Hundred and One Thousand, Four Hundred and Fifty Dollars) with said amount to be trebled to for an additional \$202,900.00 (Two Hundred Two Thousand Nine Hundred Dollars) plus interest, costs, and attorney's fees.
- (9) Award on Count V, judgment to Rizzari Construction and against Granite Industrial Gas, Inc. in the amount of actual damages of \$101,450.00 (One Hundred and One Thousand, Four Hundred and Fifty Dollars) plus interest, costs, and attorney's fees.
- (10) Award on Count V, judgment to Rizzari Construction and against Todd Miller, in the amount of actual damages of \$101,450.00 (One Hundred and One Thousand, Four Hundred and Fifty Dollars) plus interest, costs, and attorney's fees.

(11) Award such other and further relief to Rizzari Construction as this Court deems just and equitable.

JURY DEMAND

Plaintiff demands trial by jury on all issues properly triable to a jury.

Rizzari Construction,
By its attorney,



Richard P. Heartquist
200 Sutton Street
Suite #244
North Andover, MA 01845
(978) 687-6664
BBO#